DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-019IFTA
IFTA
For The Period: 1993 and 1994

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ISSUES

I. Motor Carrier: Leases

Authority: IC 6-6-4.1 *et seq.*; IFTA ; Mason Metals Company, Inc. v. Indiana Dept. of State Revenue, 590 N.E.2d 672 (Ind. Tax 1992)

The taxpayer protests the inclusion of mileage from the State of Illinois in the assessment.

STATEMENT OF FACTS

The taxpayer operates a trucking company and leases vehicles. The taxpayer also does general hauling. More facts will be provided as needed.

I. Motor Carrier: Leases

DISCUSSION

Indiana imposes a tax (the Motor Carrier Fuel Tax) "on the consumption of motor fuel by a carrier in its operations on highways in Indiana." IC 6-6-4.1-4(a). The Indiana Code sets out the following method of determining the amount of fuel consumed by a carrier on Indiana highways:

> The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.

IC 6-6-4.1-4(b).

Audit contends the taxpayer excluded certain miles from the aforementioned fraction. Audit argues that the taxpayer deducted from its Indiana mileage summaries miles that it claimed belonged to another company (hereinafter "Company A"). The taxpayer claims the miles in question were those of Company A's vehicles. To that end, the taxpayer has provided the Department with a number of documents (e.g., State of Illinois Common Motor Carrier of Property Certificate for Company A, Shipper's Manifests) which purport to show that the questioned miles and fuel were reported by another permit holder, namely Company A.

The taxpayer states that:

> [T]he fact that [the taxpayer] did not hold Illinois authority in 1993 and 1994 . . . [means that] any movements made by vehicles owned by [the taxpayer], within the state of Illinois during 1993 and 1994, would have been during the time [its vehicles] were leased to [Company A], who held Illinois intrastate authority.
>
> [The taxpayer] advised the auditor of the fact that any miles traveled in Illinois by [the taxpayer] were in vehicles leased to [Company A]. All of the freight bills, and shipping documents were made available to the auditor.

As noted, the taxpayer claims that the deducted miles and fuel belonged to Company A and that Company A reported and paid the appropriate taxes on Company A's returns. The taxpayer never submitted documentation to the Department that the tax due and owing was paid. Regarding the "lease" between the two companies (taxpayer and Company A), the taxpayer appears to be arguing that the "lessee" (Company A) is responsible under the lease agreement for the taxes in question. But the taxpayer has not even shown a lease existed—no written lease has been provided to the Department. (It should be noted that IFTA requires that the taxpayer make such leases available upon request).

The Department has requested information regarding Company A to no avail:

> This letter is to request additional information concerning the audit that I am conducting on [taxpayer]. As previously requested [Company A's information] needs to be provided to complete the audit. This information is needed to verify that the miles were deducted from the [taxpayer's] summaries and assigned to [Company A] were reported. If verification is not supplied the miles will be included in the audit as [taxpayer's] miles. (Letter from the Field Auditor to taxpayer, dated July 5, 1996)

And again the Department asked for the pertinent documentation:

> The two bills that you enclosed with your letter simply substantiate that [Company A] was conducting business in Illinois. The Department requires

> documentation to verify that [Company A] held a motor carrier permit during the audit period and that [Company A] did in fact report those questioned miles and fuel on their motor carrier return. The auditor explained this … at the time of the audit …. (Letter from Audit Protest/Review to taxpayer, dated November 20, 1996)

Turning to the "lease" between taxpayer and Company A, the Indiana Tax Court has dealt with the issue of the lessor/lessee relationship and adopted as precedent a six-factor test. (*See* Mason Metals Company, Inc., v. Indiana Dept. of State Revenue, 590 N.E.2d 672 (Ind. Tax 1992) (quoting the six factor test enumerated in Indiana Dept. of State Revenue v. Indianapolis Transit System, Inc., 356 N.E.2d 1204 (Ind.App. 1976)). The court stated that the purported existence of a lessor/lessee relationship "is a factual question dependent on the lessee's possession and control over the leased property." Mason Metals at 675. The six-factor test is as follows:

(1) The employment of the driver.
(2) The right to direct movement of the [vehicle].
(3) Obligation to pay costs and repairs.
(4) Obligation to pay fuel costs.
(5) The responsibility of garaging the vehicle.
(6) Payment of insurance and license fees.

The six factors are used to determine whether or not the lessee had possession and control of the vehicles. In the case at hand, no written lease has been proffered, nor has any proof of a lessor/lessee relationship—beyond the Shipper's Manifests and Bills of Lading—been provided to the Department. No documentation has been provided to allow the Department to make a determination consistent with the IFTA rules (e.g., the length of the lease is relevant under IFTA) and the six-factor test. The wealth of documents that the taxpayer has provided merely show that Company A was doing business in Illinois. Thus the taxpayer has not met its burden of proof.

It should also be noted that the taxpayer in one of the original letters sent to the Department stated that in addition to the above tax issue, it was also protesting "the additional assessment of tax." The taxpayer was assessed a negligence penalty of 10%--but the taxpayer has made no arguments regarding the negligence penalty beyond the rather cryptic sentence quoted above. Assuming that the taxpayer was also protesting penalty too, the taxpayer has not met its burden of proof. Thus the taxpayer is denied on the penalty issue too.

FINDING

The taxpayer's protest is denied.

DP/MR 011810